

Public Necessity Rules
of the
Tennessee Regulatory Authority
Consumer Services Division

99-00645

Statement of Necessity Requiring Public Necessity Rules

Section 5 of Public Chapter 478 of 1999, codified as TCA §65-4-405, requires the Tennessee Regulatory Authority to promulgate rules to establish, by January 1, 2000, a database of residential telephone subscribers who object to receiving telephone solicitations. Both the database and the underlying program to service and enforce such database is to be operational by July 1, 2000. Some of the elements included in this process are: notification to the public of the opportunity to be listed; recordation of all consumers who opt onto the database; registration of any telephone solicitors who desire access to the registry of such consumers; collection of all appropriate fees from such telephone solicitors; and distribution of the Do Not Call Register. The period of time specified in the enabling legislation between the promulgation date and the implementation date for these rules does not allow for the prescribed period of time required for the promulgation of permanent rules. In order to accomplish this mandate of the Tennessee General Assembly, these rules are filed pursuant to TCA §4-5-209 (a)(4).

For a copy of this public necessity rule please contact: K. David Waddell, Executive Secretary, Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, TN 47243; telephone 741-2904.



K. David Waddell
Executive Secretary
Tennessee Regulatory Authority

Public Necessity Rules
of the
Tennessee Regulatory Authority
Consumer Services Division

Chapter 1220-4-11
Telephone Solicitation Regulations - Do Not Call Register

NEW RULES

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1220-4-11-.01 Definitions

- (1) "Act" refers to T.C.A. §65-4-401 et seq.
- (2) "ADAD" or "automatic dialing and announcing device" means any device or system of devices which is used, whether alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers and disseminating recorded messages to the numbers so selected or dialed.
- (3) "Authority" means the Tennessee Regulatory Authority.
- (4) "Business Telephone Subscriber" means a person or company who has subscribed to a business telephone service from a local exchange carrier.
- (5) "Caller identification service" or "caller ID" means telephone service that notifies telephone subscribers of the telephone number of incoming telephone calls.
- (6) "Coordinator" refers to the individual employed by the Authority to oversee the regulation of telephone solicitation practices, including the operations of the Do Not Call Register, delegated to the Authority by the General Assembly in T.C.A. §§ 65-4-401 and 47-18-1501.
- (7) "Database" means the information from which the Authority compiles the Register. The database shall be maintained by the Authority, or its designee, for the purpose of fulfilling the requirements of T.C.A. 65-4-401.
- (8) "Division" refers to the Consumer Services Division of the Tennessee Regulatory Authority.
- (9) "Do Not Call Register" or "Register" means a list of telephone numbers of residential telephone subscribers who have properly enrolled with the Authority or a Federal agency, that their telephone numbers not be solicited by telephone solicitors.
- (10) "Existing customer" includes a residential telephone subscriber with whom the person or entity making a telephone solicitation has had a business relationship within the prior twelve (12) months.
- (11) "Interexchange carrier" means a company that is certificated by the Authority to provide long distance toll telephone service.
- (12) "Local exchange companies," as used in this Chapter, includes telecommunications service providers and competing telecommunications service providers as defined in T.C.A. §65-4-101, as well as telephone cooperatives and cellular or other wireless telecommunications providers operating in Tennessee.
- (13) "Not-for-profit" means an organization that is exempt from paying taxes under Section 501(c) of the Internal Revenue Code.
- (14) "Residential Telephone Subscriber" means a person residing in Tennessee who has residential telephone service.
- (15) "Telephone solicitor" means any natural person, firm, organization, partnership, association or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephone solicitation, including, but not limited to, calls made by use of automated dialing and announcing devices or by a live person.
- (16) "Telephone solicitation" means any voice communication over a telephone, originating from Tennessee or elsewhere, for the purposes of encouraging the purchase or rental of, or investment in, property, goods, or

services, Telephone solicitation does not include:

- (a) any voice communication to any residential telephone subscriber with that subscriber's prior express invitation or permission;
- (b) any voice communication to a residential telephone subscriber if such communication is made on behalf of a not-for-profit organization exempt from paying taxes under the Internal Revenue Code § 501(c), provided that a bona fide member of the exempt organization makes such voice communication;
- (c) any voice communication to any residential telephone subscriber who is an existing customer; or
- (d) occasional and isolated voice communications to a residential telephone subscriber provided all the following conditions are met:

- (i) A direct employee of the business makes the voice communication;
- (ii) The communication is not made as part of a telecommunications marketing plan;
- (iii) The business has a reasonable belief that the specific person who is receiving the voice communication is considering purchasing the service or product sold or leased by the business and the call is specifically directed to such person;
- (iv) The business does not sell or engage in telephone solicitations; and
- (v) The business does not make more than three (3) such voice communications in any one (1) calendar week.

Authority: T.C.A. §§65-2-102, 47-18-1501, 47-18-1526 and 65-4-405.

1220-4-11-.02 General Telephone Solicitation Regulations

- (1) No telephone solicitor shall place a telephone call to a residential telephone subscriber at any time other than between the hours of 8:00 a.m. to 9:00 p.m. (local time at the called party's location) without the residential telephone subscriber's prior express invitation or permission.
- (2) All telephone solicitors must institute procedures for maintaining a list of persons who do not wish to receive telephone solicitations made by or on behalf of telephone solicitors in compliance with this Chapter, and 47 C.F.R. § 64, and 16 C.F.R. § 310.
- (3) All telephone solicitations to residential telephone subscribers shall, at the beginning of such call, state clearly the identity of the person initiating the call and entity or organization such person represents, and shall further meet the following requirements:
 - (a) Within the first twenty-five (25) seconds of the call and at the conclusion of the call, ADAD messages must clearly state the name and telephone number of the person or organization initiating the call. The telephone number given must be answered when telephone solicitations are being made. The person answering the telephone must be willing and able to provide information concerning the automated call.
 - (b) Live telephone solicitors must provide a telephone number that will be answered when telephone solicitations are being made. The person answering the telephone must be willing and able to provide information concerning the solicitation call.

- (4) Telephone solicitors are prohibited from knowingly using telephone equipment or telecommunications network elements to block or otherwise interfere with the caller ID function on the telephone of a residential telephone subscriber to whom a telephone solicitation is made so that the telephone number of the caller is not displayed on the telephone equipment of the called party.
- (5) Local exchange companies and interexchange carriers are prohibited from providing any network element or service to telephone solicitors that would block or otherwise interfere with on a per line basis, the display of the telephone solicitor's name and telephone number on the residential subscriber's caller ID equipment. Local exchange companies and interexchange carriers shall modify their tariffs to reflect the requirements of this Chapter within sixty (60) days of its effective date.
- (6) After notice and hearing, and upon finding that a telephone solicitor is in violation of this Chapter, the Authority may issue an order prohibiting local exchange companies and/or interexchange carriers from providing telecommunications service to such telephone solicitor.
- (7) Violations of this Chapter can result in civil actions prescribed by law, which include fines payable to the Authority.
- (8) Telephone solicitors must adhere to state and federal statutes regarding telephone solicitation practices, including, but not limited to, the Tennessee Consumer Protection Act.
- (9) After receipt of a complaint forwarded by the Authority, telephone solicitors shall, within ten (10) working days, file a written response with the Authority.

Authority: T.C.A. §§65-2-102, 47-18-1501, 47-18-1526 and 65-4-405.

1220-4-11-.03 Maintaining The Tennessee Do Not Call Register

- (1) The Authority shall maintain a database of names, addresses and telephone numbers of all Tennessee residential telephone subscribers who have elected not to receive telephone solicitations.
- (2) The information contained in the database is not open to public inspection or disclosure as defined under Tennessee Code Annotated Title 10, Chapter 7. The Authority will take all necessary steps to protect the confidentiality of the information in the database.
- (3) The Authority shall include in its Register the list of Tennessee subscribers to the Federal Communications Commission's or any other Federal agencies' Do Not Call national database, if and when such list is established.
- (4) The Division will update the Register at the beginning of each month.

Authority: T.C.A. §§65-2-102 and 65-4-405.

1220-4-11-.04 Telephone Solicitor's Access To The Tennessee Do Not Call Register

- (1) It is the duty of any telephone solicitor engaging in the solicitation of Tennessee residential telephone subscribers to purchase the Register from the Authority. Telephone solicitors shall submit an application in writing to the Authority. The application must contain the telephone solicitor's name, address, telephone number and name of the agent for service of process along with a notarized statement from an officer of the

company affirming the company will comply with the provisions of this Chapter.

- (2) Access to the following information will be provided to approved telephone solicitors:
 - (a) The Register of telephone number of Tennessee residential telephone subscribers who have elected not to receive telephone solicitations.
 - (b) The Do Not Call Register shall be provided, with unlimited access, via the Internet or other electronic means to telephone solicitors. It is the duty of telephone solicitors to ensure they have the latest version of the Register prior to soliciting residential telephone subscribers.
 - (c) Paper copies of the Register will be available to telephone solicitors at the current per page rate as set by the Tennessee secretary of state pursuant to T.C.A. §65-1-212.
- (3) Telephone solicitors doing business in the state and subject to the control and jurisdiction of this Chapter shall pay to the Authority, on or before May 1st of each year, an annual fee of \$500 for access to the Do Not Call Register. Such annual fee shall cover the time period from the following July 1st through June 30th, or any part thereof.

Authority: T.C.A. §§65-2-102 and 65-4-405.

1220-4-11-.05 Consumer Registration With The Tennessee Do Not Call Register

The Authority shall establish and provide for the operation of a Register on which to compile a list of telephone numbers of residential telephone subscribers who object to receiving telephone solicitations. Such Register may be operated by the Authority or by another entity under contract with the Authority. Guidelines for the operation of the Register are described as follows:

- (a) Residential telephone subscribers may enroll on the Register as prescribed by the Division. Enrollment on to the Register will become effective sixty (60) days following the first day of the succeeding month of enrollment by the subscriber.
- (b) A residential telephone subscriber will remain in the "Do Not Call Register" for a period of five (5) years or until the subscriber requests that the Authority removes their name from the Register.
- (c) Business telephone subscribers may not be included on the Register.
- (d) The Coordinator may purge the Register periodically in order to ensure accuracy.

Authority: T.C.A. §§65-2-102 and 65-4-405.

1220-4-11-.06 Public Education About The Tennessee Do Not Call Register

- (1) Local exchange companies shall notify their residential subscribers twice a year on how to enroll on the Register. This notification shall accompany the subscriber's monthly telephone bill and shall be developed in cooperation with the Coordinator.
- (2) In addition to the notification required by subsection (1), local exchange companies, working in cooperation with the Division, are required to place information in their White Page telephone directory informing their residential telephone subscribers how to be included in the Register.

Authority: T.C.A. §§65-2-102 and 65-4-405.

1220-4-11-.07 Violations Of The Tennessee Do Not Call Register

- (1) It is a violation of T.C.A. 65-4-401 et seq. and this Chapter for a telephone solicitor to knowingly make or cause to be made any telephone solicitation to any telephone number that appeared in the copy of an updated Register that was in effect sixty (60) days prior to the time the telephone solicitation was made.
- (2) Violators of this Chapter are subject to a civil penalty, payable to the Authority, of an amount not to exceed Two-Thousand Dollars (\$2000) for each violation. In addition, the Authority may seek additional relief in any court of competent jurisdiction.
- (3) It shall be a defense in any proceeding brought under this Chapter that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of this Chapter.
- (4) Violations shall be calculated in a liberal manner in order to protect the public interest and deter similar violations.
- (5) Any local exchange company violating any provisions of this Chapter is subject to the penalties prescribed in T.C.A. §65-4-120.

Authority: T.C.A. §§65-2-102 and 65-4-405.

1220-4-11-.08 Enforcement Provisions

- (1) The Authority may, on its own motion, or the recommendation of the Division, or the motion of the Consumer Advocate Division, or any other interested person, order the investigation of the practices of any telephone solicitor conducting business in Tennessee. Such investigation shall determine if such telephone solicitor has violated T.C.A. §65-4-401, or this Chapter. If such investigation discloses a violation of state law or this Chapter, the Authority shall issue a show cause order with respect to such acts pursuant to T.C.A. §65-2-106.
- (2) Local exchange companies and interexchange carriers are required to fully cooperate with the Division in any investigation of an alleged violation of this Chapter.
- (3) If one or more of the term(s) or provision(s) of this Chapter or the applications thereof, to any extent, are held to be invalid or unenforceable, then the remainder of this Chapter shall not be affected thereby.

Authority: T.C.A. §§65-2-102 and 65-4-405.

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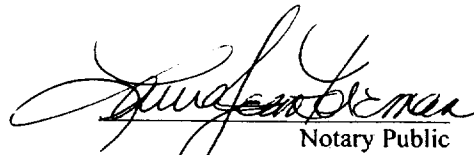
The roll-call vote by the Tennessee Regulatory Authority on these public necessity rules was as follows:

	Aye	No	Abstain
Melvin Malone, Chairman	<u>x</u>	_____	_____
Lynn Greer, Director	<u>x</u>	_____	_____
Sara Kyle, Director	<u>x</u>	_____	_____

I certify that this is an accurate and complete copy of public necessity rules, lawfully promulgated and adopted by the Tennessee Regulatory Authority on the 20th day of December, 1999.



 K. David Waddell,
 Executive Secretary

Subscribed and sworn to before me this the 29 day of DECEMBER, 1999.


 Notary Public

My commission expires on 4-1-03.

All public necessity rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


 Paul G. Summers
 Attorney General and Reporter

The public necessity rules set out herein were properly filed in the Department of State on the 30 day of Dec., 1999 and will become effective on the 30 day of Dec., 2000. These rules will remain in effect through the 12 day of June, 2001.

Riley C. Darnell
Riley C. Darnell
Secretary of State

By: [Signature]

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